

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of DPW's reported financial activity with bank records revealed a misstatement of receipts and disbursements for 2011 and 2012. For 2011, DPW understated its receipts by \$169,196 and its disbursements by \$184,702. In 2012, DPW overstated its receipts by \$402,707 and its disbursements by \$381,326. In response to the Interim Audit Report recommendation, DPW amended its disclosure reports to materially correct the misstatements.

The Commission approved a finding that DPW misstated its financial activity for calendar years 2011 and 2012.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5) (formerly 2 U.S.C. §434(b)(1), (2), (3), (4) and (5)).

Facts and Analysis

A. Facts

As part of audit fieldwork, the Audit staff reconciled DPW's reported financial activity with its bank records for 2011 and 2012. The reconciliation determined that DPW misstated receipts and disbursements for 2011 and 2012. The following charts outline the discrepancies between DPW's disclosure reports and its bank records, and the succeeding paragraphs explain why the discrepancies occurred.

2011 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2011	\$56,862	\$53,631	\$3,231 Overstated
Receipts	\$3,758,853	\$3,928,049	\$169,196 Understated
Disbursements	\$3,497,621	\$3,682,323	\$184,702 Understated
Ending Cash Balance @ December 31, 2011	\$316,089¹	\$299,357	\$16,732 Overstated

¹ DPW miscalculated its ending cash balance. It should have been \$318,094 (a difference of \$2,005). Using the correct ending cash balance (\$318,094), the discrepancy is \$18,737.

The beginning cash balance was overstated by \$3,231 and is unexplained, but likely resulted from prior-period discrepancies.

The understatement of receipts resulted from the following:

• Transfers from non-federal accounts, not reported	+	\$35,130
• In-kind contributions, not reported as receipts	+	2,565
• Vendor refund, not reported	+	9,198
• Vendor refunds reported as negatives	+	57,545
• Interest, not reported	+	145
• Political committee and individual contributions, not reported	+	73,851
• Reported refunds and contributions not supported by a credit or deposit	-	9,260
• Unexplained differences	+	22
Net Understatement of Receipts	+	<u>\$169,196</u>

The understatement of disbursements resulted from the following:

• In-kind contributions, not reported as disbursements	+	\$2,565
• Vendor refunds reported as negatives ²	+	57,545
• Transfers to non-federal accounts, not reported	+	15,119
• Disbursements and fees, not reported	+	111,793
• Reported disbursements not supported by a check or debit	-	7,317
• Vendor fees, not reported	+	4,451
• Unexplained differences	+	546
Net Understatement of Disbursements	+	<u>\$184,702</u>

The \$16,732 overstatement of the ending cash balance resulted from the misstatements described above, as well as from a \$2,005 mathematical discrepancy in calculating the ending cash balance.

2012 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2012	\$316,089	\$299,357	\$16,732 Overstated
Receipts	\$16,473,017	\$16,070,310	\$402,707 Overstated
Disbursements	\$16,462,453	\$16,081,127	\$381,326 Overstated
Ending Cash Balance @ December 31, 2012	\$290,921 ³	\$288,540	\$2,381 Overstated

² DPW reported vendor refunds as negative entries on Schedule B (Itemized Disbursements). Unless the refund is for allocable federal and non-federal expenditures or allocable federal and Levin expenditures, the refund should be reported as an offset to operating expenditures on Schedule A (Itemized Receipts).

³ DPW miscalculated its ending cash balance. It should have been \$326,654 (a difference of \$35,733). Using the correct ending cash balance (\$326,654), the discrepancy is \$38,114.

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The overstatement of receipts resulted from the following:

• Vendor refunds reported as negatives	+	\$15,312
• In-kind contributions, not reported as receipts	+	9,186
• Contribution from a political committee, not reported	+	1,000
• Transfers from non-federal accounts, not reported	+	22,310
• Transfers from the National Party, not reported	+	31,270
• Incorrectly disclosed transfers from non-federal accounts	-	43,160
• Contributions from joint fundraisers reported twice	-	457,814
• Unexplained differences	+	<u>19,189</u>
Net Overstatement of Receipts	-	<u>\$402,707</u>

Regarding the \$457,814 in contributions from joint fundraisers reported twice, the Audit staff noted the following. In its October 2012 monthly reports, DPW correctly reported transfers from two joint fundraiser representatives on Schedule A (Itemized Receipts). DPW also reported the contributions from the individuals received at these joint fundraising events. However, DPW should only have reported the contributions from the individuals as memo entries. As a result of reporting both the transfer of total contributions received from the joint fundraisers and each of the contributions from the individuals, DPW overstated the receipts it received from these joint fundraising events.

The overstatement of disbursements resulted from the following:

• Vendor refunds reported as negatives	+	\$15,312
• Transfers to non-federal accounts, not reported	+	27,179
• In-kind contributions, not reported as disbursements	+	9,186
• Duplicate reported payments to vendor	-	514,424
• Unexplained differences	+	<u>81,421</u>
Net Overstatement of Disbursements	-	<u>\$381,326</u>

Regarding the \$514,424 in duplicate reported payments, the Audit staff noted the reporting errors related to a single vendor that produced mailers for DPW. Also, all three duplicate reported disbursements were reported in the 2012 Pre-General report.

The \$2,381 overstatement of the ending cash balance resulted from the misstatements described above, as well as from a \$35,733 mathematical discrepancy in calculating the ending cash balance.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatement of disbursements with DPW representatives at the exit conference. DPW representatives asked questions for clarification and said they would respond after having time to thoughtfully review each issue. The Audit staff provided work papers detailing the misstatement of receipts to DPW representatives after the exit conference. DPW did not provide a response to either the disbursements or receipts misstatements.

The Interim Audit Report recommended that DPW amend its disclosure reports to correct the misstatements noted above and reconcile the cash balance on its most recent report to identify

any subsequent discrepancies that could affect the recommended adjustments. The Interim Audit Report further recommended that DPW adjust the cash balance as necessary on its most recent disclosure report, noting that the adjustment was the result of prior-period audit adjustments.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, DPW amended the disclosure reports to materially correct the misstatements.

Counsel explained that while DPW does not contest the discrepancies identified by the auditors as part of the misstatement finding, the nature of these discrepancies in many cases involved the form of the disclosure provided, not its substance. Counsel specifically commented on the recommended reporting adjustments of the Audit staff concerning vendor refunds and joint fundraising contributions. For example, DPW reported vendor refunds as negative entries on Schedule B (Itemized Disbursements) instead of as offsets to operating expenditures on Schedules A (Itemized Receipts) as recommended by the Audit staff. With respect to reporting adjustments for joint fundraising contributions, Counsel stated that the error in reporting occurred because the wrong box was selected in the campaign finance reporting software used to prepare its reports. Counsel further added that these contributions were reported to the Commission on a timely, individualized basis, even if its cash position was incorrect due to the reporting error.

In response, the Audit staff would like to note that Counsel's arguments for the activity noted above are based on the assumption that mere disclosure of these financial transactions is sufficient, regardless of the overall accuracy of its reports. However, the Commission's regulations under 11 CFR §104.14(d) also require disclosure reports to be accurate. DPW's method of disclosure resulted in inaccuracies in total receipts, total disbursements, and cash balances. Under 52 U.S.C. §30104(b)(1), (2), (4)⁴ and 11 CFR §104.3(a)(1), (2), (b)(1), committees must report the amount of beginning cash-on-hand, the total amount of all receipts and all disbursements, *as well as* the total amount of receipts and disbursements in various enumerated categories. Therefore, the overall totals and individual totals for specific types of receipts and disbursements are significant for disclosure purposes and accuracy.

The Audit staff agreed that vendor refunds and the joint fundraiser receipts were included in DPW's original disclosure reports. However, because the transactions were either reported twice or reported as negative entries, DPW's receipt, disbursement and cash balances were misstated. To materially correct these misstatements, DPW filed amended disclosure reports for 2011 and 2012.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that DPW filed amended disclosure reports that materially corrected the misstatement of financial activity.

E. Committee Response to the Draft Final Audit Report

DPW's response to the Draft Final Audit Report provided no additional comments.

⁴ Formerly 2 U.S.C. §434(b)(1), (2) and (4).

Commission Conclusion

On February 12, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that DPW misstated its financial activity for calendar years 2011 and 2012.

The Commission approved the Audit staff's recommendation.

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Finding 2. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that DPW did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to DPW employees totaling \$3,627,262, for which DPW did not maintain monthly payroll logs. This consisted of \$2,192,554, for which payroll was allocated with federal and non-federal funds, and \$1,434,708, for which payroll was exclusively non-federal. In response to the Interim Audit Report recommendation, DPW acknowledged the need to improve its system of maintaining monthly time logs. As a result, DPW developed a web-based system for employees to track time associated with federal election activity.

The Commission approved a finding that DPW failed to keep monthly payroll logs for the \$2,192,554 that DPW disclosed as having been paid with an allocation of federal and non-federal funds and \$28,972 that was paid from an exclusively non-federal account during periods in which the employee was also paid with federal funds. The Commission did not approve the portion of the recommended finding related to \$1,405,736 in payroll paid exclusively with non-federal funds and, as such, these expenses are presented as an "Additional Issue".

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
- employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed disbursements for payroll. DPW did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, DPW did not maintain monthly logs for \$3,627,262 in payroll.¹ This amount includes payroll paid as follows to DPW employees.

¹ This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.

- i. Employees reported on Schedule H4 and paid with a mixture of federal and non-federal funds during the same month (totaling \$2,192,554).
- ii. Employees reported on Schedule H4 and/or Schedule B and also paid with both a mixture of federal and non-federal funds and exclusively non-federal funds during the same month (totaling \$28,972); and
- iii. Employees paid exclusively with non-federal funds in a given month and not reported by DPW (totaling \$1,405,736).²

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the recordkeeping requirement with DPW representatives during the audit fieldwork and at the exit conference. DPW representatives asked questions for clarification and said they would respond after having time to thoughtfully review each issue. Subsequently, DPW representatives stated that payroll logs had not been identified nor other evidence indicating that they were maintained. However, DPW provided a statement contending that other information confirmed the basis on which employees were paid. DPW representatives supported this statement by providing exhibits with a basic job description for the employees and a narrative that stated, in part,

"Beginning in February, 2011 and continuing through the summer of 2012, Wisconsin held multiple elections in connection with various recalls of state-level elected officials. Recall elections for nine Wisconsin state senators were held during the summer of 2011. Recall elections for the Governor, Lieutenant Governor and four additional state senators were held during the spring and summer of 2012. Throughout 2011 and through the summer of 2012, the Committee and its staff were engrossed in these nonfederal elections. Employees directly involved in supporting nonfederal candidates performed no work in connection with federal elections, while other employees were paid entirely with federal funds."

In addition, DPW submitted documentation identifying non-federal and federal election dates and events for both years 2011 and 2012, stating, "...as a result of these events, the Committee hired staff to work exclusively in connection with various nonfederal *[sic]* recall elections."

The statement and exhibits provided by DPW are not sufficient evidence and do not resolve the recordkeeping finding because they do not document the time an employee spent in connection with a federal election and the documents were provided after notification of the audit.

The Interim Audit Report recommended that DPW provide evidence that it maintained monthly time logs to document the percentage of time an employee spent in connection with a federal election; or implement a plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, Counsel stated that the employee recordkeeping finding appears to be one of the most common findings in recent audits of state and local parties. Additionally, Counsel added that the scope of the Commission's jurisdiction in relation to payments to employees with non-federal funds for exclusively non-federal activity has

² Some of these employees were paid from federal funds and reported as such in other months within the audit period.

been a subject of recent Commission debate. Counsel believes the maintenance of monthly time logs is particularly burdensome for committees, such as DPW, that are heavily involved in non-federal election activity. Counsel stated that DPW participated in an unprecedented 13 non-federal elections during the 2012 election cycle. Counsel added that the non-federal elections arose unexpectedly as a result of the filing of petitions that led to the recall of 13 state senators, the lieutenant governor, and the governor. Counsel stated that the recall elections garnered nationwide attention.

Despite these contentions, Counsel acknowledged the need to improve its system of maintaining monthly time logs. Counsel stated that a web-based system for employees to enter and track time spent on federal election activity was developed. A screen shot of the new time log was also submitted. Counsel stated that having the new system electronically helps to ensure the records will not be lost or misplaced. Furthermore, Counsel stated that the web-based system complies with the requirements of Commission regulations.

Counsel raised the question as to whether the Commission should apply the employee log requirement to a party committee heavily involved in non-federal elections. However, the log requirement of 11 CFR §106.7(d)(1) also applies to payroll paid exclusively out of non-federal funds. The language is broad in that it applies the term "each employee" and "each employee" necessarily includes all of a committee's employees, including those who spend no time in connection with federal elections because zero percent is also a percentage of time spent in connection with federal elections. Counsel's statement that employees directly involved in supporting non-federal candidates performed no work in connection with federal elections needs to be documented in order to ensure that, in light of potential concerns about funding federal election related activity with federally non-compliant funds, it can be verified for accuracy.

The screen shot of the new time log shows employees are required to enter a name, description of work performed, pay period, hours spent in the pay period on non-federal activity, hours spent in the pay period on federal activity, and a certification that the information entered is accurate. If the web-based system tracks the time each employee spends in connection with a federal election, as the screen shot suggests, then it is consistent with the Commission payroll log requirements for party committees at 11 CFR §106.7(d)(1). As such, DPW has complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs in the future.

D. Draft Final Audit Report

The Draft Final Audit Report mentioned that DPW acknowledged there was a need to improve its system of maintaining monthly time logs. DPW developed a web-based system for employees to track time associated with federal election activity.

E. Committee Response to the Draft Final Audit Report

DPW's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On February 12, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that DPW failed

to maintain monthly payroll logs to document the percentage of time each employee spent in connection with a federal election totaling \$3,627,262.

The Commission approved a finding that DPW failed to keep monthly payroll logs for the \$2,192,554 that DPW disclosed as having been paid with an allocation of federal and non-federal funds and \$28,972 that was paid from an exclusively non-federal account during periods in which the employee was also paid with federal funds. The Commission did not approve the portion of the recommended finding related to the \$1,405,736 in payroll paid exclusively with non-federal funds during a given month and, as such, the matter is presented in the "Additional Issue" section.